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IN THE COURT OF APPEALS OF INDIANA

J.T.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0602-JV-106
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0512-JD-5281

August 21, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant J.T. appeals the trial court's finding of delinquency after it was determined that he committed the offense of Carrying a Handgun Without a License,[1] had it been committed by an adult. Specifically, J.T. argues that the admission of the handgun into evidence at the fact-finding hearing violated his rights under the Fourth Amendment to the United States Constitution and his right to be free from unreasonable search and seizure under Article 1, Section 11 of the Indiana Constitution. Concluding that the handgun was properly admitted into evidence, we affirm the trial court's finding that J.T. was a delinquent child.

FACTS

At approximately 12:00 a.m. on December 11, 2005, Indianapolis Police Officer Alma Trowe noticed a vehicle that was occupied by four juveniles in the rear of a Taco Bell parking lot at Washington and Belmont Streets. Officer Trowe was aware that a number of recent robberies and a homicide had recently occurred in the area.

When Officer Trowe approached the vehicle and tapped on the driver's side window, she noticed that the driver and the other occupants appeared to be very young. At the time of the initial approach, Officer Trowe did not draw her weapon or activate the lights on her police vehicle. Officer Trowe asked the driver, who identified herself as L.O., if she had an operator's license. L.O. responded that she did not, and stated that the vehicle belonged to her grandfather. After obtaining a telephone number from L.O., Officer Trowe spoke with L.O.'s grandmother, who drove to the scene. The grandmother informed Officer Trowe that

[1] Ind. Code § 35-47-2-1.

L.O. did not have permission to use the vehicle and that the other occupants—one of whom was subsequently identified as fifteen-year-old J.T.—did not have permission to be in the vehicle. At this point, Officer Trowe radioed for backup assistance.

When additional police officers arrived, Officer Trowe ordered J.T. from the vehicle. After J.T. stepped out of the vehicle, Officer Trowe noticed a beer bottle where he had been sitting. Officer Trowe then conducted a patdown search of J.T.'s outer clothing for her safety. At some point, Officer Trowe felt what she believed was a handgun in J.T.'s jacket pocket. She reached inside the jacket and removed a semi-automatic handgun that held several rounds of ammunition. One of the other officers conducted patdown searches of the other occupants in the vehicle and discovered that one of the passengers was in possession of a switchblade knife.

As a result of the incident, J.T. was arrested, and the State filed a petition alleging J.T. to be a delinquent child for possessing the handgun without a license. During a fact-finding hearing that commenced on January 11, 2006, J.T. moved to suppress the handgun, claiming that Officer Trowe had improperly stopped him and that the subsequent patdown search was illegal. The trial court denied the motion and J.T. was subsequently adjudicated a delinquent child. J.T. now appeals.

DISCUSSION AND DECISION

I. Standard of Review—Generally

We initially observe that a trial court has broad discretion in ruling on the

admissibility of evidence. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). This court will reverse a trial court's ruling on the admissibility of evidence only when it is an abuse of discretion. Id. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id.

II. J.T.'s Claims

A. Initial Stop

J.T. first contends that the finding of delinquency must be set aside because Officer Trowe improperly stopped and detained him in the restaurant parking lot. Specifically, J.T. contends that the stop was illegal because Officer Trowe "was unable to articulate any facts giving rise to a reasonable, particularized suspicion that J.T. was engaging in or about to engage in unlawful activity." Appellant's Br. p. 2.

In addressing this contention, we initially observe that not every encounter involving police and a citizen constitutes a seizure requiring objective justification. Overstreet v. State, 724 N.E.2d 661, 664 (Ind. Ct. App. 2000) (Robb, J., dissenting). As long as the person to whom questions are asked remains free to disregard the questions and leave, there has been no intrusion on that person's liberty. Id. More specifically, we determined in Overstreet that:

> To characterize every street encounter between a citizen and the police as a seizure, while not enhancing any interest guaranteed by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices. See United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). Indeed, it is not the purpose of the Fourth Amendment to eliminate all contact between police and the citizenry. Id. at 553, 100 S.Ct. 1870.

> As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy to require some particularized and objective justification. Id. at 554, 100 S.Ct. 1870. Examples of circumstances under which a reasonable person would have believed he was not free to leave include the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. Id. "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." Id. at 555, 100 S.Ct. 1870.

Id. at 664.

In this case, the evidence established that Officer Trowe observed a group of juveniles sitting in a vehicle in the back of a parking lot at night in a high crime area. Tr. p. 12-13, 20, 26-27. She was aware that there had been several robberies and a homicide in the vicinity in recent days. As a result, Officer Trowe—who was by herself—approached the vehicle, though she did not draw a weapon. Id. at 14-15. She did not touch J.T. or any of his companions during this encounter, and no evidence was presented suggesting that her police cruiser was parked in a way that would prohibit the vehicle from leaving the parking lot. After asking the occupants of the vehicle to identify themselves, Officer Trowe returned to her police car, and she never indicated that any of the occupants were under arrest or in any kind of "trouble." Id. at 19. In light of these circumstances, we decline to hold that the initial contact between Officer Trowe and J.T. amounted to an unlawful detention. See Overstreet, 724 N.E.2d at 664.

Additionally, we note that after this encounter, Officer Trowe returned to her police cruiser and learned that L.O. was not licensed to operate a motor vehicle, and that L.O. had

taken the vehicle without permission. Hence, by the time that Officer Trowe prolonged the initial approach or encounter, possibly implicating Fourth Amendment concerns, it was reasonable for Officer Trowe to further detain J.T. and his companions in order to conduct further investigation regarding their possible involvement in criminal activity. Therefore, we decline to hold that the trial court should have ruled the handgun inadmissible on the theory that J.T. was improperly stopped and detained.

II. Patdown Search

J.T. next argues that the gun should not have been admitted into evidence because his rights against unreasonable search and seizure under the Fourth Amendment to the United States Constitution were violated. Specifically, J.T. contends that the patdown search was improper and that Officer Trowe was not justified in reaching into his jacket and seizing the gun.

We begin by noting that both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution protect the privacy and possessory interests of individuals by prohibiting unreasonable searches and seizures. Barfield v. State, 776 N.E.2d 404 (Ind. Ct. App. 2002). Generally, a lawful search requires a judicially issued search warrant. Id. When a search is conducted without a warrant, the State has the burden of proving that an exception to the warrant requirement existed at the time of the search. N.W. v. State, 834 N.E.2d 159, 162 (Ind. Ct. App. 2005), trans. denied. The United States Supreme Court recognized one such exception to the warrant requirement in Terry v. Ohio, 392 U.S. 1 (1968). In particular, Terry permits a

> "reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger."

Wilson v. State, 745 N.E.2d 789, 792 (Ind. 2001) (quoting Terry v. Ohio, 392 U.S. at 27).

Additionally, we note that a police officer's authority to conduct a patdown search is dependent upon the nature and extent of his particularized concern for his safety. Wilson, 745 N.E.2d at 792. "[A]n individual stopped may not be frisked or patted down for weapons, unless the officer holds a reasonable belief that the particular individual is armed and dangerous." Swanson v. State, 730 N.E.2d 205, 210 (Ind. Ct. App. 2000). In other words, if a police officer has a reasonable fear of danger after conducting a Terry stop, he may conduct a carefully limited search of the outer clothing of the suspect in an attempt to discover weapons that might be used to harm him. Williams v. State, 754 N.E.2d 584, 588 (Ind. Ct. App. 2001).

Finally, the seizure of contraband detected during the lawful execution of a Terry search is permissible under the "plain feel" doctrine. Burkett v. State, 785 N.E.2d 276, 278 (Ind. Ct. App. 2003); Johnson v. State, 710 N.E.2d 925, 928 (Ind. Ct. App. 1999). In Minnesota v. Dickerson, 508 U.S. 366, 375-76 (1993), the United States Supreme Court determined that police officers may seize contraband detected by means of the officer's sense of touch during a protective patdown search of the sort permitted by Terry. As noted in Dickerson,

> If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context.

Id. That said, in reviewing the admissibility of contraband seized without a warrant under the "plain feel" doctrine, two issues are dispositive: (1) whether the contraband was detected during an initial patdown for weapons rather than during a further search; and (2) whether the identity of the contraband was immediately apparent to the officer. Burkett, 691 N.E.2d at 1244-45.

Again, the evidence in this case demonstrated that several armed robberies and one homicide had occurred in the immediate vicinity " a week or two weeks" before this incident. Tr. p. 26, 27. In fact, Officer Trowe testified that "our robberies [have] gone peek [sic] high." Id. at 27. After Officer Trowe learned that the group of juveniles did not have permission to be in L.O.'s grandmother's vehicle, she could have reasonably believed that J.T. may have been armed, given the circumstances that he may have been involved in under-aged drinking or some other criminal activity in the area. Id. at 26, 27. Officer Trowe further testified as follows:

> STATE: So when you are dealing with subjects on the street in that area do you fear for your safety or the possibility that one of them has a gun?
>
> [OFFICER TROWE]: I mean I don't walk around fearing everybody but I . . . fear that I might make a mistake and yes I am going to get hurt or yes I am going to get shot. But that would be anybody who knows how . . . it is out in the streets.

Id. at 27.

In considering the above, it is apparent to us that the totality of the circumstances established that Officer Trowe's patdown of J.T. was reasonable. Finally, we note that the evidence established that when Officer Trowe reached into J.T.'s jacket, she "knew it was a gun." Tr. p. 24. As a result, J.T. has failed to establish a Fourth Amendment violation when Officer Trowe conducted the patdown search of J.T.'s jacket and seized the weapon.

III. Violation of Article 1, Section 11 of the Indiana Constitution

Finally, J.T. argues that the gun was seized in violation of his rights under Article 1 Section 11 of the Indiana Constitution. Specifically, J.T. argues that Officer Trowe "intruded substantially upon J.T.'s ordinary activity," because she did not articulate any facts demonstrating that J.T. had violated any law. Appellant's Br. p. 2.

In addressing this issue, we note that Article I, Section 11 of the Indiana Constitution provides that

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Although this language tracks the Fourth Amendment verbatim, Indiana has explicitly rejected a defendant's "expectation of privacy" as a test for the reasonableness of a search or seizure. Litchfield v. State, 824 N.E.2d 356, 358 (Ind. 2005). Rather, the legality of a governmental search under the Indiana Constitution turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances. Id. In

particular, our Supreme Court has determined that the totality of the circumstances inquiry focuses on the degree of concern, suspicion, or knowledge that a violation has occurred, the degree of intrusion that the method of the search or seizure imposes on the citizen's ordinary activity, and the extent of law enforcement needs. Id. Moreover, because Indiana citizens are concerned not only with personal privacy but also with safety, security, and protection from crime, some intrusions upon privacy are accepted, so long as they are reasonably aimed toward those concerns. Holder v. State, 847 N.E.2d 930, 940 (Ind. 2006).

In this case, it is apparent that the degree of intrusion was minimal. In the initial approach, Officer Trowe simply approached the parked vehicle and asked the driver to identify herself. Tr. p. 16. Only after Officer Trowe learned that the driver had no license and had taken the vehicle without the owner's permission did a more substantial intrusion occur. That said, the degree of concern and suspicion of criminal activity was substantial in this case. Specifically, Officer Trowe approached the vehicle because it was suspiciously located in the rear of a parking lot after midnight in a high crime area. The level of suspicion escalated when L.O. was unable to produce a driver's license, and later, when it was learned that the driver was in possession of the vehicle without the owner's permission. Hence, Officer Trowe could have entertained the reasonable belief that criminal activity was afoot when she ordered J.T. and the others to exit the vehicle.

In essence, the circumstances here demonstrated that Officer Trowe was conducting routine investigatory police work in an area that required a higher, more proactive patrol than many others. The record shows that Officer Trowe made cautious decisions in her pursuit of

maintaining safety in an area of concern. Therefore, we conclude that her actions were reasonable and that they fell well within the needs of law enforcement. For these reasons, J.T.'s claim that the patdown search and subsequent seizure of the gun violated his rights under Article 1, Section 11 of the Indiana Constitution fails.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.